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STATUS REPORT

JANUARY 2003

THE MINISTER'S MONITORING COMMITTEE

ON THE 32 RECOMMENDATIONS FROM

THE REVIEW COMMITTEE OF THE WORKERS' COMPENSATION BOARD APPEAL SYSTEMS

(FRIEDMAN REPORT)

Reported by: Workers' Compensation Board (WCB)
Appeals Commission for Alberta Workers' Compensation (AC)
Alberta Human Resources & Employment (AHRE)

FRIEDMAN REPORT Recommendations	GOVERNMENT Response July 2001	Action by	PROGRESS/CHANGES as of January 2003 (Who's reporting and what's been done or what's changed)
1. Supervisor to actively guide review, to sign letter describing outcome. Emphasis to be placed on accuracy in first decision.	Accept	WCB	**WCB:** The Decision Review Body (DRB) is established effective January 1, 2003 to replace CSRC/ARC as intermediate level of review within the WCB. The DRB is based on a collaborative dispute resolution model that starts with the case manager's supervisor. The supervisor reviews the decision on file and ensures that the claim was managed properly.
2. Institute a mandatory, time-limited, ADR process in the Office of the Appeals Advisor, wherein ADR Officers would help resolve disputes Where a continued difference in medical opinion, matter to be assigned to the Medical Resolution Committee	Accept in Principle	WCB AC	**WCB:** The Decision Review Body (DRB) is established effective January 1, 2003 to replace CSRC/ARC as intermediate level of review within the WCB. The DRB is based on a collaborative dispute resolution model that starts with the case manager's supervisor. Its implementation follows a 6- month pilot, in which 95% of issues were finalized within 60 days, whereas the CSRC model finalized 93% of issues within 180 days. **AC:** The Appeals Commission established Pre-hearing appeal preparation units in Edmonton and Calgary effective Sept 1, 2002 to more effectively prepare appeals for formal hearing in direct contact with the worker and employer to: ▪ clarify what issues are being appealed ▪ decide the jurisdiction of the AC to deal with the issues (decision made by panel) ▪ identify and obtain appropriate medical information ▪ inform parties of the appeal process ▪ educate parties regarding legislation, policy and Appeals Commission decisions.

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3. Establish a Clerk's Office responsible for ensuring compliance with regulated timelines	Accept in Principle	WCB	**WCB:** The WCB has established formal processes within Customer Service and DRB to standardize timelines for processing of reviews and appeals. Also, the Appeals Commission Decision Compliance Committee has been created for monitoring and ensuring the implementation of Appeals Commission decisions within the legislated time frame. **AC:** The Appeals Commission has an established Appeals Management System that tracks the status of each appeal and the time used at each stage of the processing of an appeal.
4. The Office of the Appeals Advisors should report to the Minister of Justice Advisors should be selected based on experience, and should have legal training or related experience Manager of Office should have legal training or related work experience Office should be expanded to include ADR officers 5. WCB should pay for an external representative for claimants for a reasonable amount of time, at a rate based on the Legal Aid Tariff 6. WCB should pay for legal advice for employers for assessment matters, for a reasonable amount of time, at a rate based on the Legal Aid Tariff	Accept in Principle	AHRE WCB	**AHRE:** At a symposium held September 2001, stakeholders expressed mixed views on the need to separate the Appeals Advisors from the WCB and on the use of external advisors, putting emphasis on other concerns such as availability of the advisors. As there was no consensus, the Appeals Advisors currently remain with the WCB. **WCB:** The Board of Directors recently enacted a policy establishing the mandate of the Office of the Appeals Advisors as providing independent advice, assistance and advocacy to injured workers and dependants. The WCB has also devoted additional resources to the Office of the Appeals Advisors in response to demand.

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7. Medical Resolution Committee to review cases with difference of medical opinion	Accept in Principle	The Minister WCB	**AHRE:** The *Workers' Compensation Act* was amended to provide for a medical panel which by the Board or the Appeals Commission may access to address any medical issue, to require the Board to refer a difference of medical opinion to it, and to make its decisions binding on the Board, the Appeals Commission and all other persons. The Minister has approved a set of performance measures on which the WCB will report at the completion of the one-year pilot. **WCB:** In 2001, the WCB proposed a new and improved panel process to resolve medical disputes. Dr. Larry Ohlhauser, formerly registrar of the Collage of Physicians and Surgeons of Alberta, implemented and is now administering the new process. Two key highlights are: ▪ Greater access for claimants and their treating physicians to a medical panel. ▪ Arm's length medical panel administration and process. The WCB will report to the Minister on the pilot by fall of 2003.
8. Consultation between Minister of Health and College of Physicians and Surgeons	Accept in Principle	WCB	See above.
9. Eliminate CSRC and ARC in favour of an ADR process	Accept in Principle	The Minister WCB	**AHRE:** The *Workers' Compensation Act* was amended to replace both the Claims Services Review Committee and the Assessment Review Committee with a "review body". This enabled the WCB to pilot a different approach and evaluate it against accepted performance measures before a full implementation. **WCB:** The amendments to the *Workers' Compensation Act* allowed the gradual phasing out of the hearings-based CSRC/ARC model in favour of a collaborative dispute resolution model. A pilot (the Early Resolution Initiative) began in April 2002 and it was implemented as the Decision Review Body effective January 1, 2003.

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10. Legislate a right of appeal to the Court of Appeal from any order, ruling or decision of the Board or Appeals Commission on any question of law or jurisdiction. (This appeal must be made within 30 days)	Accept in Principle	The Minister	**AHRE:** Section 13.4 of the *Workers' Compensation Act* was amended to enable an appeal on a question of law or jurisdiction, within 6 months. This section came into force September 1, 2002.
11. There should be a regulated 30-day timeline for implementation of appeal decisions	Accept	The Minister	**AHRE:** Section 13.3 of the *Workers' Compensation Act* was amended to require the WCB to implement an AC decision as prescribed in the decision or within 30 days. This section came into force September 1, 2002
12. Delete the privative clause, thereby allowing appeals to the Court of Appeal on questions of law or jurisdiction, and as to whether the tribunal exercised its jurisdiction fairly	Accept in Principle	The Minister	See outcome of recommendation 10 above.
13. The Appeals Commission is to determine which matters are acceptable for appeal	Reject		
14. Costs of Appeals Commission to be paid from General Revenue, through Justice; WCB to reimburse General Revenue	Accept in Principle	The Minister	**AHRE:** Section 12(3) of the *Workers' Compensation Act*, amended by Bill 26, provides for Appeal Commission costs to be paid by the Minister (from General Revenue) and reimbursed to the Crown by the Board from the Accident Fund. This section came into force September 1, 2002.

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15. The Appeals Commission should be appointed by and report to the Minister of Justice: WCB to remain with Minister of HRE	Accept in Principle	The Minister	**AHRE:** The Appeals Commission, under the amended Section 11 of the *Workers' Compensation Act*, reports directly to the Minister of Human Resources & Employment. This amendment came into force September 2002.
16. Commissioners be neutral and not representative of employers, workers, or their affiliation (Hearing Panel Chairs should have legal training)	Accept (Reject)	AC	**AC:** A panel interview process involves stakeholder representation from workers and employers to arrive at recommendations for appointments. Essential competencies include: ▪ Considerable experience in interpretation/application of policy/legislation through experience in administrative tribunals, arbitration, and/or mediation ▪ Strong understanding and knowledge of worker's compensation is desirable See Recommendation # 26 re training.
17. Parties to be allowed to call witnesses (by subpoena), to cross-examine witnesses	Accept	The Minister	**AHRE:** Section 13.1(5) of the *Workers' Compensation Act* was amended to provide the Appeals Commission with the power to compel the attendance of witnesses and to examine them under oath. This amendment was effective September 2002.
18. Future Chief Commissioners should be lawyers Tenure should be limited to two, three-year terms	Reject		
19. Clerk's office is to collect summaries of facts and authorities (legislation, regulations and policy) being relied on by each party, and distribute to all parties at least 14 days before the hearing	Accept	AC	**AC:** Beginning in August 2000 the Appeals Commission began sharing of Appeal Document Packages (ADPs) with the parties. An ADP is the package of documents that have been extracted from the claim file and that pertain to the issue(s) of appeal. Each party to the appeal is given 21 days to review the ADP and raise concerns or to provide additional documents for the package. As of December 2000 this was fully implemented for all appeals.

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20. Appeal hearings should be recorded and a copy of the transcript provided upon request	Accept	AC	**AC:** Effective March of 2002 the Appeals Commission began recording all appeal hearings. ▪ Use a digital recording process the same as the courts. ▪ Transcripts of the recording may be obtained from a transcription service at cost
21. Appeal Panel members must draft and finalize their own decisions	Accept	AC	**AC:** In May of 2000 the Appeals Commission began a transition to have Hearing Chairs write the decisions of the appeal panels. This section came into force September 1, 2002 ▪ Registrars (who were employees of the WCB) attended hearings, the decision-making meetings of the panel and drafted the decision on behalf of the panel. The role of Registrars has been phased out. ▪ Hearing Chairs are responsible for the conduct of the hearings and write the decisions of the panel.
22. The Act should be amended to incorporate the 'benefit-of-doubt' policy into legislation. Where the Commission has difficulty reaching a decision, this principle should be applied.	Reject		
23. Legislate that Appeals Commission decisions can be filed in the Court of Queen's Bench as an order of the court if they are not implemented by the WCB within 30 days of the date of the decision.	Reject (see Service/Doerksen 18 and Appeals/Friedman 11)		

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24. Where appropriate, along with a decision, the Appeals Commission is to decide the rate of benefit or assessment	Reject (see Appeals/Friedman 13)		
25. Decisions should be published quarterly, and made easily available to the public in a manner consistent with the *FOIPP Act*; the availability should be advertised widely and indicated on appeal forms	Accept	AC	**AC:** All decisions of the Appeals Commission issued after January 1, 2003 will be published on the Appeals Commission website beginning April 1, 2003. The website will include a search capability. A new decision format has been adopted to address the confidentiality provisions of the *Workers' Compensation Act* and *Freedom of Information and Protection of Privacy Act*.

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26. Create a training and continuing education program for Panel Chairs, Registrars, Appeals Advisors and ADR Officers, funded by General Revenue and reimbursed by WCB; program to cover legislation, policy, evidence, analysis and writing, format for recording decisions	Accept	AC WCB	**AC:** AC has developed and delivered a comprehensive training program for appeals commissioners and hearing chairs including: • All commissioners have completed the two-day Foundations of Administrative Justice Training Course • All hearing chairs have completed a 3.5 day training course in decision- making and a 4 day training course in decision-writing. • All commissioners have completed a 2.5 training course in decision-making and a 2 day training course in decision writing. • All new appeals commissioners complete: – 1 week classroom training including legislation, policy, procedures, preparing for an appeal – 3 weeks Training on the Job including– observing hearings, preparation for hearings, observing and making own decision with comparison to actual panel decision, etc. – Training in decision-making and decision writing. **WCB:** WCB Early Resolution (ER) Specialists and Appeals Advisors have in excess of 10 years case management experience prior to assuming their roles. In addition, all ER Specialists have received training in alternative dispute resolution/conflict management.
27. Amend legislation to create 2-year time limit for appealing case manager's written final decision to Commission	Reject		
28. Legislate a right to a further appeal under the new system for all appeals dismissed since the Appeals Commission was created	Under Review.	The Minister	**AHRE:** The *Workers' Compensation Act* was amended to enable the Lieutenant Governor in Council to make regulations to address these appeals. No decision has been made yet on establishing a review body.

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29. Create a regulated 90-day time limit from date appeal is filed to date of issuance of decisions	Accept in Principle	AC	**AC:** The Appeals Commission has adopted Performance Measures as part of Accountability Framework. The performance measures include: appeal to decision and hearing to decision, percentage of decisions issued within 30 days of hearing, percentage of appeals processed within 125 days.
30. Appeals Commission to: • determine what issues are appealable • accept new issues throughout appeal • accept new evidence throughout appeal	Accept in Principle	AC	**AC:** The Appeals Commission has established pre-hearing units in Edmonton and Calgary to provide early determination on issues of appeal and to gather all related documentation prior to formal hearing.
31. Legislate a client's Bill of Rights, including right to be informed of all benefit entitlements, and administrative procedures and appeals	Reject		
32. Implementation Steering Committee to be struck	Accept in Principle	The Minister	**AHRE:** The Minister has established *The Minister's Monitoring Committee on Workers' Compensation.*